

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT
NASHVILLE, TENNESSEE**

| | | | |
|---|----------------------|---|-------------------|
| IN RE: | June 30, 2005 |) | |
| | |) | |
| JOINT PETITION OF MCG CAPITAL CORPORATION, IDS | |) | DOCKET NO. |
| TELCOM CORP., AND IDS TELCOM, LLC FOR | |) | 05-00048 |
| AUTHORITY TO COMPLETE AN ASSIGNMENT OF | |) | |
| AUTHORITY TO PROVIDE COMPETITIVE SERVICES AND | |) | |
| SALE OF CUSTOMER BASE AND OTHER ASSETS | |) | |

ORDER APPROVING TRANSFER OF ASSETS

This matter came before Chairman Pat Miller, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on April 18, 2005 for consideration of the *Joint Petition* ("Joint Petition") filed by MCG Capital Corporation ("MCG"), IDS Telcom Corp ("New IDS") and IDS Telcom, LLC ("Old IDS") (collectively "Petitioners"). The Petitioners sought approval of the transfer of substantially all of the telecommunication assets of Old IDS to New IDS

Background

MCG is a solutions-focused publicly held financial services company formed under the laws of the State of Delaware. MCG is the ultimate owner of New IDS through its portfolio investment company, Cleartel Communications, Inc

Old IDS is a telecommunications provider that operates within the southeastern United States providing competitive telecommunications services to residential and small to medium-sized business customers. Old IDS was granted a Certificate of Public Convenience and Necessity ("CCN") to provide facilities-based and resold competitive telecommunications services in Tennessee on May 22, 2001 by an order issued in TRA Docket No 00-01102

Joint Petition

The *Joint Petition* was filed with the TRA on February 14, 2005. Documents entitled Management Information, MCG Financial Information, Illustrative Chart and New IDS Corporate Documents were attached to the *Joint Petition* along with the proposed customer notification letter. The Petitioners requested TRA approval of a transaction involving the transfer of substantially all telecommunications assets of Old IDS, including its CCN, to New IDS. As a result of the proposed transaction, New IDS will replace Old IDS as the service provider operating in Tennessee.

According to the *Joint Petition*, New IDS possesses the technical, managerial and financial resources required to ensure that New IDS can provide high quality services in Tennessee. The *Joint Petition* states that MCG has extensive financial resources, and that as of year-end 2003, MCG had total assets of more than \$791 million. The Petitioners maintain that approval of the transfer will serve the public interest by ensuring that New IDS customers enjoy continuity of high quality communications services. The Petitioners also assert that the proposed transaction will not cause customer confusion because there will be no change in the “IDS” brand name and the rates, terms and conditions of service will remain the same.

Statutory and Regulatory Framework

The transfer at issue in this Docket is governed by Tenn Code Ann. § 65-4-113. That provision requires a public utility to obtain TRA approval to transfer its CCN. Tenn. Code Ann. § 65-4-113(a) reads as follows.

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn Code Ann. § 65-4-113(b) provides the standards by which the TRA shall consider an application for transfer of authority, in pertinent part, as follows:

Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming

public to be gained from the transfer. . . .

Additionally, when a customer base is transferred between two or more telecommunications service providers, TRA Rule 1220-4-2-.56(2)(d) provides that sufficient notice has been given to affected customers when the following criteria have been met:

2. A notification letter, pre-approved by the Authority, shall be mailed by U.S. First Class Postage by the telecommunications service provider being acquired to its customers describing the customer transfer and explaining that the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a certain date unless the customer selects another telecommunications service provider. This customer notification shall be mailed to the customers no less than thirty (30) days prior to the actual customer transfer. The notification letter required by the FCC may be used for the notification purposes of this part. The Authority may waive the thirty (30) day notice requirement of this part for good cause shown.
3. The acquiring telecommunications service provider agrees to pay any fees charged to the customer associated with changing service to the acquiring telecommunications service provider. The notification letter required in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.
4. The acquiring telecommunications service provider agrees to provide to the affected customers a thirty (30) day written notice of any rate increase that may affect their service up to ninety (90) days from the date of the transfer of customers. The notification letter mentioned in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.

April 18, 2005 Authority Conference

At the April 18, 2005 Authority Conference, the panel noted that the proposed customer notification letter did not comply with TRA Rule 1220-4-2-.56(2)(d). Specifically, the proposed letter indicated that the transfer was scheduled to take place on or about March 31, 2005, prior to receiving Authority approval and did not provide the requisite 30-day notice to customers. Additionally, the letter did not articulate the consumer protections afforded by Authority rules when a customer base is transferred to another carrier.¹

The panel voted unanimously to approve the *Joint Petition* pursuant to a finding of compliance

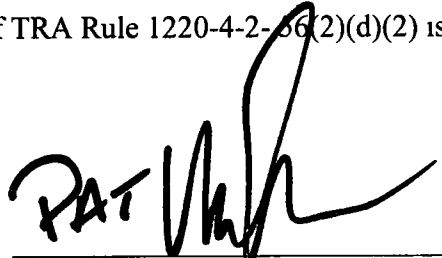
¹ TRA Rule 1220-4-2-.56(2)(d) requires that the acquiring carrier pay transfer fees and afford a thirty-day notice of rate increases within the first ninety days after the transaction occurs

with the requirements of Tenn. Code Ann. § 65-4-113(2004) with the condition that Old IDS modify and re-send the customer notification letter in accordance with TRA Rule 1220-4-2-.56(2)(d) to include a provision specifying that the new provider will pay any fees charged to the consumer associated with transferring service to the new provider and a provision informing the customers that the new provider will issue a 30-day notice of any rate increase occurring within 90 days following this transfer. Additionally, the panel voted unanimously to waive the requirement that the customer notification letter be pre-approved by the TRA and mailed no less than 30 days prior to the actual customer transfer.

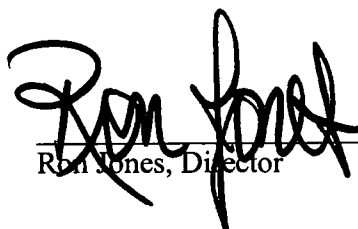
IT IS THEREFORE ORDERED THAT:

1. The *Joint Petition* is approved with the condition that Old IDS modify the customer notification letter in accordance with TRA Rule 1220-4-2-.56(2)(d) and re-send the letter to customers. The modified letter should include a provision specifying that the new provider will pay any fees charged to the consumer associated with transferring service to the new provider and a provision informing the customers that the new provider will issue a 30-day written notice of any rate increase occurring within 90 days following the transfer.

2. The thirty-day notice requirement of TRA Rule 1220-4-2-.56(2)(d)(2) is waived.



Pat Miller, Chairman

Sara Kyle, Director

Ron Jones, Director